



**South Coast
AIR QUALITY MANAGEMENT DISTRICT**

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April 18, 1995

Mr. Matt Haber
Chief, New Source Section
United States Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Subject : New Source Review

Matt
Dear Mr. Haber:

I am writing in response to your letter of December 19, 1994, where you provided comments and recommendations regarding revisions being developed to South Coast Air Quality Management District (AQMD) Regulation XIII - New Source Review (NSR). The AQMD staff responses are enclosed for your review.

You will note from the enclosure that there are several policy issues that we are working together to resolve. As this will not likely happen in time to allow a public hearing in June 1995, we have postponed the adoption hearing date to September 8, 1995. According to AQMD's current policy, notice of the public hearing will be given at the AQMD Governing Board meeting on July 14, when the entire rule hearing package is available for public review, analysis, and comment. Therefore, the staff proposal needs to be finalized no later than the first week in June to allow for legal review, printing, distribution, etc. We need your assistance and expedited feedback to hold to this timeline.

After your review, if further policy issues remain unresolved, we can discuss them at the May 2 meeting between the senior management staff of AQMD, ARB, and EPA, Region IX. Pat Leyden, Deputy Executive Officer, Stationary Source Compliance, of AQMD, will host this policy meeting.

Matt Haber

April 18, 1995

Meanwhile, if you have any questions or need additional information, please contact me at (909) 396-3185 or Jill Whynot at (909) 396-3104.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anupom Ganguli', with a stylized flourish at the end.

Anupom Ganguli, Ph.D.
Senior Manager
VOC RECLAIM Rule Development
Stationary Source Compliance

AG:pl

cc: Ray Menobroker, Air Resources Board
Robert Kwong, AQMD
Pat Leyden, AQMD

(haber)

Comment 1-1:

Section 173(a)(4) of the Clean Air Act (CAA) requires that the applicable implementation plan be adequately implemented for the nonattainment area in which a proposed source is to be constructed or modified. Proposed Amended Regulation XIII does not specifically make this requirement a prerequisite for permit issuance. Unless Proposed Amended Regulation XIII includes language that complies with Section 173(a)(4) of the CAA, the EPA will not be able to approve the proposed amended regulation into the SIP.

Response 1-1:

The South Coast Air Quality Management District (AQMD) has reviewed Section 173(a)(4) of the Clean Air Act¹ and disagrees with EPA's interpretation that the language in this section must be incorporated into Regulation XIII as prerequisite for permit issuance.

Section 173(a)(4) of the CAA states that a permit to construct and or operate may be issued if "the Administrator has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified" [emphasis added.]

This language specifically introduces a double negative concept, "the Administrator has not determined that the applicable implementation plan is not being adequately implemented" [emphasis added] that relates to the EPA Administrator's function of reviewing the AQMD's Air Quality Management Plan (AQMP) and not to specific permit requirements like Lowest Achievable Emission Rate (LAER) or offsets.

Comment 1-2:

Subdivisions (a) and (b) of Proposed Amended Rule 1301 both have changes that show that the District is departing from its regulation of halogenated hydrocarbons and only regulating Ozone Depleting Compounds (ODCs). Such a modification is a relaxation of the District rule since the set of ODCs is a subset to the set of halogenated hydrocarbons. EPA's concern is magnified by the additional proposed modification of Regulation XIII by allowing sources to trade ODCs and ROGs.

Response 1-2:

Within the scope of Proposed Amended Regulation XIII, by definition, Ozone Depleting Compounds (ODCs) include all of the compounds defined as Halogenated Hydrocarbons in the May 3,

¹ 42 U.S.C. Section 7503(a)(4)

1991 version of Rule 1302. Therefore, the elimination of the term "Halogenated Hydrocarbons" is not a relaxation of the rule. All of the pertinent compounds are included in the definition of ODCs in Proposed Amended Rule 1302 - Definitions. AQMD is proposing that increases in VOCs necessary for transitioning from ODCs be exempt from offset requirements.

Comment 1-3: Subdivision (b) of Proposed Amended Rule 1301 is the applicability section of Regulation XIII. However, this section does not state that sources that fail to obtain a permit to construct prior to beginning construction will be subject to enforcement. EPA reminds the District that because federal regulations require major sources and major modification to obtain a pre-construction permit, the District pre-construction review program must make such a requirement enforceable for the program to be approvable. See 40 CFR 51.160.

Response 1-3: *A new section, Subdivision (e) Enforcement has been added to Proposed Amended Rule 1301, to address EPA's enforcement concerns.*

Comment 1-4: It is unclear whether the District rule applies to sources on the outer continental shelf (OCS). Please clarify the applicability of this rule.

Response 1-4: *In May 1994, the EPA granted the AQMD Delegation of Authority to implement and enforce the requirements of the Outer Continental Shelf (OCS) Air Regulations.² Pursuant to the Delegation of Authority between EPA and AQMD, Regulation XIII applies to sources in the Outer Continental Shelf, for non-RECLAIM pollutants.*

Comment 1-5: The District rule defines essential public services as sewage treatment facilities and publicly (or privately owned) and operated landfill gas control or processing facilities. Under 40 CFR 51.165(a)(1)(v), Major Modification, EPA defines projects that may be exempt from New Source Review. Among those facilities, sewage treatment facilities and publicly (or privately owned) and operated landfill gas control or processing facilities are not included. Because the District exempts essential public services

² 40 Code of Federal Regulations, Part 55

from offsets, unless the District is proposing to include such facilities as sources which will be tracked in the District tracking system for the purposes of demonstrating equivalence with the federal NSR program, and the District shows that it will provide offsets for these sources prior to their construction and issuance of air pollutants, EPA recommends that the District modify this definition in accordance with the federal definition.

Response 1-5: *The AQMD will track the NSR activities of all sources and will demonstrate compliance with federal NSR offset requirements through an equivalency demonstration. The AQMD will use an aggregate approach to demonstrate that Regulation XIII and the overall attainment strategy is equivalent to the federal requirements. To demonstrate that the federal NSR offset requirements are met, the AQMD has designed a comprehensive NSR tracking system.*

Comment 1-6: EPA understands that the term "facility" is intended to have the same operative meaning as Stationary Source as defined under 40 CFR 51.165(a)(1)(i). Additionally, within the definition of facility, the District uses the term "source" to complete the definition of "facility". Although the term is defined in an equivalent manner as the federal definition, the definition of facility must also state that any group of "sources" with the same SIC code shall be considered as part of the same facility. See 40 CFR 51.165(a)(1)(ii), building, structure, facility, or installation.

Response 1-6: *The definition of the term "facility" under Proposed Amended Rule 1302(h) is more stringent than the federal definition in that it does not matter if the source or group of sources is within the same Standard Industrial Code (SIC). Any source or group of sources "located on one or more contiguous properties" is considered as part of the same facility. Adding SIC may cause some operational difficulties for AQMD, as well as confusion for the regulated facilities.*

Comment 1-7: The District has included SO₂ as a PM₁₀ precursor that significantly contributes to the nonattainment area problem, it must require that sources of SO₂ meet the same requirements of PM₁₀. The currently proposed regulation states that a facility with a potential to emit 100 tons per year or more of SO₂ will be considered a major polluting facility. However, because the South Coast Air Basin is serious for PM₁₀ and since SO₂ is considered a significant

contributor to the area's PM₁₀ problem, the correct major source definition for PM₁₀ precursors is 70 tons per year. See CAA Section 189(e).

Response 1-7: *The definitions of "Major Polluting Facility" (Proposed Amended Rule 1302(k)) and "Major Modification" (Proposed Amended Rule 1302(j)) for SO_x have been modified to incorporate the 70 and 15 tons per year thresholds for Major Polluting Facility and Major Modification, respectively.*

Comment 1-8: The District defines ODCs as the Class I compounds listed under 40 CFR 82, Appendix A to Subpart A. However, as stated in our comment for Rule 1301, the District has chosen to regulate ODCs and no longer regulate halogenated hydrocarbons. Under the EPA Significant New Alternative Proposal (SNAP, proposed rule, FR Vol. 58, No. 90, May 12, 1993) program, EPA identifies both Class I and Class II substances as ODCs for use and trade under that program. Thus, EPA reminds that District that it does not have to limit itself to Class I compounds. In addition, please see our comments on section 1304(f) of the District rule.

Response 1-8: *Please refer to response to comment 1-2.*

Comment 1-9: EPA understands that the District's definition of ROG is intended to be the equivalent of the federal Volatile Organic Compound (VOC) definition. However, the District list of exempt ROG does not include many of the components listed under 40 CFR 100(s), the definition of VOCs. The missing compounds include the following ammonium carbonate, ethane, HCFC-124, HFC-125, HFC-134, HFC-143a, HFC-152a, and the perfluoro carbon compounds described under 40 CFR 100(s)(1)(i) to (iv). It is important that the list of exempt compounds under the District rule match the federal list, since the list essentially defines what compounds can or cannot be used to create Emission Reduction Credits. Using exempt compounds to create ERCs to offset VOCs would violate the NSR requirements set forth under 40 CFR 51.165.

Response 1-9: *The definition of exempt compounds has been modified to match the federal definition, and VOC will be substituted for ROG in the revised rule.*

Comment 1-10: The following terms/definitions are missing from Regulation XIII. These definitions are required under 40 CFR 51.165:

Actual Emissions
Allowable Emissions
Begin Actual Construction
Commence Construction
Construction
Federally Enforceable
Net Emissions Increase

Response 1-10: *This issue is being studied at present.*

Comment 1-11: The District has not defined the term “fugitive emissions.” Since the District does not use this term in the rule, EPA reminds the District that all emission quantifications must include fugitive emissions.

Response 1-11: *Based on the definitions of “facility” (Proposed Amended Rule 1302(i)) and “source,” (Proposed Amended Rule 1302(z)) all air contaminant-emitting activities, including fugitive emissions associated with a source subject to new source review, are calculated and evaluated as part of permit processing.*

Comment 1-12: The following terms are used in Regulation XIII but are not defined. EPA recommends that the District define these terms since they play key parts in the regulation.

Emissions limitation
Functional Identical Replacement
Reconstructed source
Surplus
Quantifiable
Permanent

Response 1-12: *This issue is being studied at present.*

Comment 1-13: According to Section 110(a)(1)(D) of the CAA, emissions from a new or modified major source cannot cause or contribute to a violation of the NAAQS in the state where the source is proposed or in other states. Although Rule 1303 requires that sources not have modeled concentrations greater than the significance levels above the amounts listed in Table A-2, the rule does not address the requirement that the modeling or screening analysis must conform to EPA approved models. See also 40 CFR 51.160.

- Response 1-13:** *The screening analysis in Table A-2 of Proposed Amended Rule 1303 is based on EPA approved models. Language has been added to the proposed rule to require the use of EPA approved models.*
- Comment 1-14:** Section 173 of the CAA and 40 CFR 51.165(h)(l) requires that pre-construction review programs contain a provision that requires statewide compliance from all sources owned or operated by the permit applicant prior to District permit issuance. However, the District rule only requires that the proposed facility comply with District regulations; District regulations do not require statewide compliance from all sources owned or operated by a permit applicant.
- Response 1-14:** *Language has been added to Proposed Amended Rule 1303 to incorporate your comment.*
- Comment 1-15:** For sections 1304(a)(1), (e)(4), (e)(5), and (f), EPA suggests that the District refer to the John S. Seitz memo date July 24, 1994, entitled "Pollution Control Projects and New Source Review." Unless the projects under paragraphs 1304(a)(1), (e)(4), (d)(5), and (f) are considered Pollution Control Projects, they may not be exempted from offsets.
- Response 1-15:** *The AQMD has reviewed the John Seitz memorandum and is currently working with EPA to define which projects would be exempt from federal new source review pursuant to the "Pollution Control Projects Exemption." The AQMD maintains that the above exemptions within the proposed rule conform to the EPA exemption criteria outlined in Mr. Seitz's memorandum. Emissions increases not exempted pursuant to federal law will be offset in an aggregated manner, and demonstrated through the AQMD NSR tracking system, since the AQMD program for offsets extends beyond EPA's major source cut off.*
- Comment 1-16:** Section 1304(a)(1), Replacements, is problematic. First, if the District does not, or since it has not, submitted to EPA an approved tracking system that will show the appropriate offset ratios from internal trades on a District wide basis, then replacing old equipment with functionally identical equipment without providing offsets at the applicable offset ratio of 1.3:1 would be cause for

EPA to disapprove the District's rule. Second, if the District does include this and all other exemptions as part of the tracking system as emissions for which the District will provide mitigation at the appropriate offset ratio, then the District must also take into consideration the possibility that the source may have an emissions increase when the replacement is made; such an increase should be tracked accordingly. Please note that until EPA approves the tracking system, sources proposing to use this exemption may be leaving themselves open to possible enforcement or citizen suit under federal law.

Response 1-16: *The AQMD's NSR Tracking System was designed to track all NSR activities including, transactions which require the application of the internal offset ratio of 1.3 to 1. The AQMD has provided EPA information on the tracking system and will be happy to work with EPA to allow EPA staff to see the tracking system design and operation. Furthermore, the AQMD welcomes the EPA's assistance in designing the reporting formats for equivalency demonstration.*

Comment 1-17: Section (a)(2) of Proposed Amended Rule 1304. Although this section is slightly different than section 1304(a)(1), please see our comment on 1304(a)(1) since the same concerns apply.

Response 1-17: *Please see response to Comment 1-15.*

Comment 1-18: Proposed Amended Rule 1304 states that Resource Recovery and Energy Conservation projects will be exempt from Regulation XIII to the extent required by state law. In addition, Section 1309(g) allows these sources to obtain UDCs to offset these increases. As we mentioned in our comments on section 1309(g), the District has not obtained EPA approval to grant UDCs to Cogeneration or qualifying facilities. Thus, these groups of sources would have to obtain federally enforceable offsets prior to permit issuance as required under Section 173(c) of the CAA. Again, if the District proposes to mitigate the emissions from these sources through the tracking system and the District plan, we reiterate that such a tracking system must be approved by EPA prior to sources being able to obtain a permit and constructing under the assumption that the District will provide for any required offsets. Please clarify if this is your intent or if these sources will be required to obtain offsets on their own. If sources will be required to obtain offsets on

their own, the EPA suggests that the District modify the rule accordingly, or delete this section.

Response 1-18: *As noted, this exemption is a requirement of state law; therefore, the AQMD must maintain it. Emission increases subject to federal NSR offsets will be mitigated as part of the AQMD's equivalency demonstration. Based on previous history, the AQMD does not expect this exemption to be used frequently in the future. Therefore, it is expected that any emission increases resulting from the implementation of this exemption would be insignificant.*

Comment 1-19: Section 1304(e)(4) Regulatory Compliance, could apply to most any type of equipment that is installed to comply with any requirement. Please note that in the case of control equipment used to come into compliance as a result of an enforcement action, the source would have to comply with all the requirements of New Source Review if the source had significant increases of any criteria pollutant. For additional guidance on this topic, refer to the John Seitz memo dated July 1, 1994, entitled Pollution Control Projects and New Source Review (NSR) Applicability. Again, if the District proposes to keep this exemption, the EPA expects to see such emission increases as part of the tracking system and EPA expects that these sources will not be exempt from offsets until after EPA approves the tracking system.

Response 1-19: *The AQMD will maintain this exemption. Please refer to Response to Comment 1-18.*

Comment 1-20: EPA understands that under Subdivision 1304(f) the District proposes to allow sources to exchange exempt ODCs with VOCs and allow these sources to be exempt from New Source Review. Under federal regulation, if a source increases emissions of the VOC in significant amounts it is subject to New Source Review. Thus, EPA will be unable to approve a rule that explicitly allows such trades to take place.

Response 1-20: *The AQMD believes that the "Pollution Control Exemption" pursuant to 42 U.S.C. Section 7511a(e)(2), which states in pertinent part that "offset requirements ... shall not be applicable in Extreme Areas to a modification of an existing source if such modification consists of installation of equipment required to comply with the applicable implementation plan, permit, or ... chapter", provides the statutory relief from offsets for the*

replacement of ODC with VOCs. Therefore, the AQMD will maintain this exemption.

Comment 1-21: Although EPA sets out guidelines under the SNAP program to use in phasing out ODCs, those guidelines should not be misinterpreted to mean that EPA allows a source to be exempt from new source review nor that EPA considers a trade between an ODC and a VOC a pollution control project. In general, EPA does not consider material switches pollution control projects; therefore, sources proposing such switches will be subject to new source review if a major source increases its emissions in significant amounts or if a minor source makes an increase that by itself is major. Please note that 40 CFR 51.100 explicitly lists the compounds that are not considered VOCs and that, thus, cannot be used for offset purposes (40 CFR 51.165). Please see our comments under Section 1304(e)(4).

Response 1-21: *Please see Response to Comment 1-20.*

Comment 1-22: The AQMD appears to exempt equipment that emits less than four tons per year from the offset requirements. EPA understands that the District's intent is to exempt facilities with emissions of 4 TPY or less. As it stands, the section could be misinterpreted to state that the District is exempting equipment of 4 TPY or less located at any facility.

Response 1-22: *The language of Proposed Amended Rule 1304 has been modified to make it clear that a source is exempt from offsets pursuant to this exemption only when located at a facility whose potential to emit is less than 4 tons per year for that pollutant.*

Comment 1-23: The District rule details the net emissions increase calculation consistent with federal requirements for most purposes. However, when used together with Rule 1303, the calculation procedure conflicts with the requirements of the CAA in the following manner. Section 182(c)(2) states that, for an area designated extreme for ozone, a major modification is any emissions increase of an ozone precursor at an emissions unit located at a major stationary source of an ozone precursor. The District rule states that a major modification is any net emissions increase at the facility. Thus, while the District may allow a new emission unit to net out of review, through requiring BACT, the CAA requires full

review, unless the source can provide internal offsets at a 1.3 to 1 ratio. Thus, the District must modify the calculation procedure for modification of major ozone precursor emitters.

Response 1-23: *Pending resolution through the May 2, 1995 Tri-Agency Policy meeting.*

Comment 1-24: The District has proposed to construct an emission tracking system which will be used to demonstrate to EPA that the District, as a whole, will be meeting the offset ratio applicable to the District for the purposes of Ozone precursors. Additionally, the District has proposed that such ratio will be 1.3 to 1 for internal trades and 1.2 to 1 for external trades rather than 1.5 to 1 for external trades by claiming that the District requires all sources to apply BACT as allowed under Section 182(e)(1). However, until the District actually demonstrates to EPA in an approvable manner that the District plan requires all sources to apply BACT, the offset ratio for major sources or major modification at major sources in the South Coast AQMD must be 1.5 to 1 for external trades. In addition, until the District submits an approvable tracking system and makes a showing that the District is achieving the appropriate offset ratio on a basin-wide basis, all major sources and major modifications to major stationary sources must obtain offsets at the federally applicable ratio. For the purposes of these comments, major source and major modification have the federal definition under 40 CFR 51.165 and CAA Section 182(e), not the equivalent Regulation XIII definition.

Response 1-24: *This issue is being studied at present.*

Comment 1-25: Proposed Amended Rule 1309(h) states that the Executive Officer may allow interpollutant trading on a case-by-case basis without stating on what basis the decision will be made. Currently, EPA is looking into how to allow interpollutant trades. Such trades, however, will require scientific justification which may include, but may not be limited to the following:

- (1) the use of an EPA approved model to determine the appropriate ratio that should be used on an area wide basis and/or on a case-by-case basis,
- (2) EPA approval of such modeling demonstration, and
- (3) demonstration and EPA approval that the precursor being used to mitigate the pollutant which the proposed source

will emit actually contributes to the areas non-attainment problem.

Additional details may be needed to make such a demonstration. Nevertheless, neither the District rule nor the District plan address the above stated issues. Thus, simply stating that the Executive Officer has the authority to allow interpollutant trading on a case-by-case basis would be cause for EPA to be unable to fully approve this rule.

As an alternative, the District could state in the rule that, for precursors, it allows the offsetting of NO_x as an Ozone precursor, for example, with NO_x only, and of SO₂ as a PM₁₀ precursor with SO₂ only, etc.

Response 1-25: *The language in this section has been modified to subject any interpollutant trades to EPA review and approval.*

Comment 1-26: The District rule does not state that offsets must be federally enforceable. Section 173 of the Clean Air Act requires that prior to permit issuance, federally enforceable offsets must have been secured by the source obtaining a permit. Thus, this section of the rule does not conform with federal requirements and would make the program unapprovable. Section 1309(b)(3) does state that emission reductions must be enforceable, but the term "enforceable" is not defined and there is not indication that "enforceable" means "federally enforceable" as defined under 40 CFR 51.165.

Response 1-26: *This issue is being studied at present.*

Comment 1-27: Proposed Amended Rule 1309 paragraph (g) states that cogeneration facilities and qualifying facilities shall receive UDCs towards project offset requirements. For such reductions to be available, the District would first have to demonstrate that such reductions are permanent and enforceable, as outlined in the Cogeneration and Resource Recovery Permitting Handbook (CRRPH). The District must also make a demonstration, as outlined in the handbook, on the availability of reductions which can be obtained from the grid and the District's ability to create, manage, track, and project emissions from the Local Utilities providing the reduction. To date, with the exception of one District in California, no air pollution control agency has submitted such a demonstration to EPA. Since such a demonstration would be very resource intensive with little or no significant amount of creditable reductions for use as a result, EPA suggests the District remove this

section from the rule (please be aware that if the District does credit such reductions to a source, the District will have to make up the reductions elsewhere in the Basin).

Response 1-27: *Please refer to Response to Comment 1-25.*

Comments 1-28: EPA understands that the District uses District Rule 212 as the rule implementing public notice requirements. Rule 212, nevertheless, is deficient in meeting the federal public notice requirements outlined under 40 CFR 51.161. Please note that the essence of the public notice requirement is for the permitting agency to announce the proposed construction in a prominent newspaper of general circulation, for the permitting agency to provide a 30 day public comment period, for the permitting agency to make accessible any materials used in making the determination to propose grading such a construction in the area affected, including the analysis of the proposed project and the assessed air quality impacts. In addition, even if Rule 212 were adequate, Regulation XIII by itself would not be approvable unless submitted for inclusion into the SIP in conjunction with an approvable version of Rule 212. EPA recommends that the District either include the necessary public notice requirements under Rule 1310 or modify Rule 212 to remedy its deficiencies. EPA further recommends that the public notice requirement establish that EPA be notified for any NSR action requiring public notice.

Response 1-28: *A new section, Section (c) Public Notice Requirements, has been added to Proposed Amended Rule 1303. This new section will help meet the federal public noticing requirements. Public notice requirements will be applicable to sources whose emissions exceed the existing Community Bank emission levels.*

Comment 1-29: Please be advised that EPA cannot approve a New Source Review rule that does not meet the public notice requirements outlined under 40 CFR 51.161. As an example, please see District Regulation XVI - Prevention of Significant Deterioration, and Rule 212(g), public notice for Outer Continental Shelf facilities, which contains language acceptable to EPA for the purposes of public notice for proposed projects subject to New Source Review. EPA reminds the District that satisfying the public notice requirements of 40 CFR 51.161 does not translate to satisfying the public notice requirements of the federal operating permit program, 40 CFR 70.

Response 1-29: *Please see response to comment 1-28.*

- Comment 1-30:** Stack Height: The District rule does not state that the degree of emission limitation required may not be affected so much by actual stack height that it exceeds good engineering practice as required under 40 CFR 51.164, Stack Height Procedures.
- Response 1-30:** *AQMD permitting procedures already incorporate good engineering practice to ensure that a source's stack height does not affect the emission limitation required of the source. Furthermore, the modeling requirements of Proposed Amended Rule 1303 have been modified to incorporate your comment.*
- Comment 1-31:** Alternative Siting Analysis CAA section 173(a)(5) requires that an alternative siting analysis be performed showing that the benefits the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. If the District is fulfilling this CAA requirement elsewhere, EPA recommends that the District either submit such regulation for approval, or include the alternative source siting analysis in this rule.
- Response 1-31:** *Language has been added to Proposed Amended Rule 1303(b)(6) to incorporate your comment.*
- Comment 1-32:** Control Technology Information CAA section 173(d) requires that State plans provide that control technology information from permits issued pursuant to Section 173 of the Act will be promptly submitted to the Administrator for purposes of making such information available through the RACT/BACT/LAER clearinghouse to other States and to the general public. Please modify the District regulation to comply with the requirements of the CAA.
- Response 1-32:** *The AQMD will comply with the requirements of Section 173(d) and will submit to EPA Region IX pertinent control technology information from permits issued. However, AQMD disagrees with EPA that any additional language dealing with this issue is necessary in Regulation XIII since this is a requirement for the permitting agency and not the regulated community.*

Comment 1-33: The District rule does not state that sources commencing construction without an approval to construct are subject to enforcement. Although District Rule 201 states that a person shall not build, erect, install, alter or replace equipment...without first obtaining written authorization for such construction from the Executive Officer. The rule does not state that such written authorization will not be issued until the preconstruction requirements of Regulation XIII have been met. Please note that if the District plans to use this rule to make the District New Source Review program complete, then Rule 201 must be modified to conform with federal requirements and submitted concurrently with Regulation XIII for SIP approval.

Response 1-33: *This issue is being studied at present.*

Comment 1-34: The District rule does not state that the authority to construct does not relieve the owner of the proposed facility from complying with the District regulation. See 40 CFR 51.165(a)(4)(i).

Response 1-34: *This issue is being studied at present.*

Comment 1-35: At the time that a source or modification becomes a major stationary source or a major modification solely by virtue of a relaxation in any enforceable emission limitation which was established after August 7, 1980, or the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of regulations approved pursuant to this section shall apply to the source or modification as though construction had not yet commenced on the source or modification. See 40 CFR 51.165(a)(4)(ii).

The District rules must include this language as part of the New Source Review program submitted to EPA for approval into the SIP.

Response 1-35: *This issue is being study at present.*

Comment 1-36: The District SIP approved Rule 205 limits the life of the construction approval to two years, unless an extension is granted. The rule, however, does not cause a permit to expire if the source

does not commence construction within 18 months of permit issuance, or discontinue the construction of such a source for more than 18 months. Although this is not a requirement under 40 CFR 51.160 to 165, it is a requirement under 40 CFR 52.21. Thus, if the District issues one permit comprised of both NSR and PSD requirements, the permit will have to expire within 18 months from issuance if a source does not began continuous construction within, or discontinues construction for more than, 18 months. See 40 CFR 52.21. Thus, for consistency with both programs, EPA suggests that the District modify Rule 205 by adding language that will cause the expiration of a permit if construction is not commenced within, or discontinued for, 18 months.

Response 1-36: *This issue is being study at present.*